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BEFORE THE  
**Federal Communications Commission**  
WASHINGTON 25, D. C.

IN RE APPLICATIONS OF  
**KMPC, THE STATION OF THE STARS, INC.**  
Los Angeles, California  
For renewal of license of Radio Station KMPC,  
Los Angeles, California  
Docket No. 9468—File No. BR-18  
  
**WJR, THE GOODWILL STATION, INC.**  
Detroit, Michigan  
For renewal of license of Radio Station WJR,  
Detroit, Michigan  
Docket No. 9469—File No. BR-331  
  
**WGAR BROADCASTING COMPANY**  
Cleveland, Ohio  
For renewal of license of Radio Station WGAR,  
Cleveland, Ohio  
Docket No. 9405—File No. BR-283

Before: Hon. JAMES D. CUNNINGHAM, *Hearing Examiner.*

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**MEMORANDUM OF WJR, KMPC and WGAR IN SUP-  
PORT OF PROPOSED FINDINGS OF FACT AND  
CONCLUSIONS**

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Dated: April 25, 1951.

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Before Hon. James D. Cunningham, Hearing Examiner.

**MEMORANDUM OF WJR, KMPC and WGAR IN SUP-  
PORT OF PROPOSED FINDINGS OF FACT AND  
CONCLUSIONS**

These proceedings involve the licenses of three of the nation's finest radio stations, the Goodwill stations, WJR in Detroit, Michigan, WGAR in Cleveland, Ohio, and KMPC in Los Angeles, California. Each has 50,000-watt power and each serves an area with millions of listeners. A majority of the stock of each station is owned by Mr. G. A. Richards and his wife and daughter, and the stations are hereinafter sometimes called the Richards stations.

This memorandum will not attempt to discuss the detailed Proposed Findings of Fact and Conclusions submitted

on behalf of the stations, but will state concisely the issues of importance to the public involved in these proceedings such as (1) whether the Federal Communications Commission (hereinafter referred to as the Commission) may use a hearing on a renewal application as a substitute for the procedure required in revocation proceedings, without violating the Administrative Procedure Act; (2) whether the issues as framed were so vague and indefinite as to make it impossible for the Examiner to conduct a fair hearing; (3) whether there exist any standards to judge the propriety of newscasts; (4) whether the Commission has the authority to inquire into the private political, social or economic views of any stockholder of a radio station licensee as a basis for determining whether to grant a renewal application; (5) whether the Commission can invoke the death sentence on a radio station in a proceeding where its General Counsel and staff have wilfully suppressed vital evidence, and have endeavored to present a biased and one-sided case; and (6) whether the Commission has jurisdiction over the content of newscasts or other programs despite the bans in the Act and in the Constitution against censorship and abridgement of free speech.

- 1. The attempt to use a renewal hearing as a substitute for a revocation proceeding not only violated the Administrative Procedure Act, but caused such confusion as to deprive applicants of a fair hearing.**

Ostensibly these proceedings involve a renewal of the licenses. Actually, they are in the nature of revocation proceedings arising out of complaints by former employees of KMPC, with a request for an investigation of all three stations by James Roosevelt, and action by the Commission staff with respect thereto. The statutory requirements for revocation proceedings have not been complied with. Motions to compel compliance with such requirements, particularly with the requirements of the Administrative Procedure Act



and the Communications Act, have been made to and denied by the Commission. All action subsequent thereto has been taken without waiving the error in the Commission's failure to specify its charges with respect to the stations, to assume the burden of proof with respect to such charges, and to proceed in accordance with the requirements of law for the revocation of the licenses.

The complaints by these former employees were directed against Mr. G. A. Richards, the principal stockholder of each of the three stations. Under his management and ownership the three stations have been built from negligible beginnings—as small and insignificant stations with limited power to 50,000 watt stations, each reaching millions of listeners and each enjoying the highest reputation and standing with those listeners. WJR has been under the management of Mr. Richards for 24 years, WGAR for 20 years, and KMPC for 13 years. The Commission has repeatedly renewed the licenses of these stations and has granted applications for increased power, and other applications, after having satisfied itself with the excellent character of the services performed by the stations, and that such services have been in the public interest.

Because licenses for radio stations are issued only for three years the stations are operating under temporary licenses. The evidence herein was taken before the Examiner under issues designated by the Commission for its consideration on the renewal of the licenses. Without specifying charges or assuming any responsibility for the burden of proof thereof, the Commission has compelled the stations to answer at a public hearing complaints made by discharged, disgruntled former employees, who sought vengeance against Mr. Richards and these stations and gave wide publicity to their complaints.

Various motions on behalf of the stations to change the issues; to conform procedure to the statutory requirements of the Administrative Procedure Act and the Communications Act; for a more definite statement of matters of fact

and law asserted upon behalf of the Commission; and for a Bill of Particulars; were made to the Commission prior to the taking of testimony before the Examiner and were denied by the Commission. The Examiner thereafter repeatedly ruled that he was restricted by the action of the Commission with respect to such motions solely to the issues as designated to him by the Commission, and granted exceptions to the stations, which at all times preserved their objections to the procedure forced upon them by the Commission.

**2. The issues as drawn were so vague and indefinite that it is impossible for the Examiner to make any determination.**

The issues so designated by the Commission are set forth in the Commission's order of September 28, 1949 and confirmed in its order of January 11, 1950 denying the motion to change the issues and for other relief as follows:

1. Whether G. A. Richards has at any time while he was an officer or principal stockholder of the licensees of Stations WGAR, Cleveland, Ohio; KMPC, Los Angeles, California; and WJR, Detroit, Michigan, issued instructions or directives to officers and employees of said licensees—

- (a) To present news broadcasts in a manner designed to give a biased or a one-sided presentation of the news;
- (b) To broadcast false news concerning particular issues or persons;
- (c) To broadcast editorials of daily newspapers as news items and without identification of such editorials as such;
- (d) To discriminate in news and other broadcasts in favor of any political causes, groups, or candidates as against the interests of other political causes, groups or candidates;

(e) In any other manner to promote or further the private political, social and economic views and interests of Mr. G. A. Richards;

2. To what extent, if any, officers or employees refused to carry out instructions or directives, if any, of the nature specified in Issue No. 1, and what disciplinary action, if any, was taken or caused to be taken by G. A. Richards against any officers or employees of said licensees who may have refused to carry out such instructions or directives;

3. To what extent, if any, the facilities of said stations, or any of them, have been used to carry out said instructions or directives;

4. To determine the accuracy of representations in respect to any of the matters set forth in the foregoing issues, made in affidavits and pleadings submitted to the Commission by and on behalf of G. A. Richards;

5. In the light of the facts adduced under the foregoing issues to determine the qualifications of KMPC, The Station of the Stars, Inc.; WJR, The Goodwill Station, Inc.; and WGAR Broadcasting Company, and whether a grant of the said applications would serve the public interest, convenience and necessity.

All of these issues are stated in conclusory language only. There is nowhere a statement of any facts charged by the Commission to be true. Issue No. 1 seeks to ascertain only whether various instructions or directives were issued by Mr. Richards. The term "instructions or directives" is a conclusion; the subjects are the broadest of generalities; and there is no specification of standards, if any, claimed by the Commission to apply to such subjects.

For example, the Commission does not describe or define what it means by biased or one-sided presentation of news, nor designate any rule or standard for use in making such

a determination, nor say who is to be the judge of what news is to be presented over the radio: whether it is to be the Commissioners themselves, or a member of the Commission's staff, or whether it is to be the stations' employees hired to prepare newscripts regardless of their experience or judgment or bias, or whether it is to be the owner subject to his necessity for obtaining and preserving public approval. There is no indication as to how the propriety or impropriety of "instructions or directives" having to do with newscasts is to be judged without being able to judge the fairness or objectivity of the newscast before and/or after such instructions or directives. There is not even an indication in Issue No. 1 as to whether the Commission is interested in making an over-all determination as to whether the news as a whole on the Richards stations was fairly presented, or whether, as the conduct of its General Counsel would indicate, it intends to pick and choose a few subjects out of tens of thousands and, without getting the full facts as to any of those subjects, base a determination on its conclusions as to the handling of those subjects. There is no indication as to whether the Commission is even interested in the opinions of men who have worked with newspaper and radio news all their lives as to whether or not the news was fairly presented over the three stations, and no basis for believing that the Commission has the experience to qualify it to make worthwhile conclusions with respect to news and the handling of news.

Issue No. 2 seeks to ascertain the extent to which officers or employees refused to carry out instructions, and disciplinary action, if any, taken against them. Issue No. 3 seeks to ascertain whether the facilities of the stations were used to carry out instructions but does not specify how such a determination can be made without an examination and analysis of everything which was broadcast by the three stations throughout the period of their ownership by Mr. Richards, or at least for some defined period of time. Issue No. 4 seeks to ascertain the accuracy of statements made with respect to Issues 1 to 3; and Issue No. 5, the broad, general

question as to whether from whatever facts should be adduced in connection with the first four issues, it would be in the public interest to license the stations.

A motion on behalf of the stations made on November 20, 1950 for a reconsideration of the issues in the light of the thousands of pages of testimony and of exhibits previously received by the Examiner was denied on February 23, 1951. The Commission refused even to consider the problems raised by its previous rulings or the facts brought forth in the testimony before the Examiner, and refused any assistance to the Examiner in the form of standards to govern presentation of news, interpretation of the meaning of the issues as set forth in the order of September 28, 1949, or otherwise.

The Examiner, therefore, had no guide to assist him as to the Commission's policy or purpose in this proceeding, except the knowledge that the Commission had not brought similar proceedings against other radio stations because of the known views of their owners on politics and other controversial subjects, and had not even directed an investigation by its staff into such matters, including for example, testimony of former Federal Bureau of Investigation personnel as to Communist domination of the programs of a radio station in Pittsburgh.

It is a matter of common public knowledge that the Commission has licensed many radio stations to newspapers, labor unions, church organizations, and other groups (even to political leaders at local, state and national levels) who are known partisans of controversial questions, and who use the facilities of their own stations to present their viewpoints, and who engage commentators and newscasters to express their opinions and to select news and other material for broadcast. The Richards stations, on the other hand, have never been affiliated with any newspaper or any other organization espousing a cause, and Mr. Richards has seldom used the facilities of his own stations, and then only to dedicate expansions thereof or improvements therein.

3. **The failure of the Commission to indicate standards by which the Examiner should judge the newscasts deprived applicants of their right to establish that the newscasts were fair and impartial.**

Two hundred seventy-five witnesses testified before the Examiner. Their testimony covered 18,265 pages of record. More than 1,200 exhibits, comprising in the aggregate tens of thousands of pages of material, were introduced in evidence.

In addition some 7,000 individual newscasts of Station KMPC, covering the period from September 1947 to date, some 19,000 newscasts of Radio Station WJR, covering the period January 1945 to date, and some 13,000 newscasts of Station WGAR, covering the period from 1944 to date were offered to the Examiner, who denied the request of the stations that they be received in evidence to prove the contents and fairness of the newscasts, ruling that the fairness of the newscasts was not in issue (Tr. 16161, 16171), and that it would be physically impossible for the Examiner to read, understand and rule with respect to such a vast volume of material.

Mr. E. Z. Dimitman, who spent a lifetime studying and engaging in the gathering, analysis, presentation and dissemination of news as a reporter and as a managing editor of several leading newspapers in the United States, owned and published by persons with widely different and conflicting political viewpoints, was prevented by the Examiner from testifying to his examination and study of the newsclips of Station KMPC for the purpose of presenting an analysis and giving an opinion of the adequacy and fairness of that station's coverage and treatment of the subjects involved in the complaints of the former employees of KMPC. The station was thereby prevented from proving that in the opinion and according to the analysis of an independent news expert KMPC's news was both fair and adequate with respect to all the subjects complained of by its former employees (Tr. 15234-15238).

Similarly, Mr. Lawrence Sullivan, who had worked for all three of the major wire services, Associated Press, United Press and International News Service, who had been a White House correspondent for years, and who had been retained by the Congress of the United States as its expert on Government propaganda and loaned by it on request to the Commission headed by ex-President Herbert Hoover, for a study of the reorganization of government and who in that connection had investigated government propaganda activities and aided in the preparation of a report with respect thereto by the Hoover Commission, was prevented by the Examiner from testifying (Tr. 15127-15140). His testimony was offered to establish that news at its source, prior to being received at the offices of the wire services for consideration, analysis, rewording and editing by them, subject to the human errors incident to the limitations of experience, time and ability of their personnel, is subjected to intensive governmental propaganda activities by the various executive agencies of the U. S. Government. Through Mr. Sullivan the Richards stations offered to prove that thousands of persons are employed by the Federal executive agencies at an expense to the Government of millions of dollars annually for the purpose of presenting the news of their activities to and over the wire services and through them to and over the radio stations in the manner most favorable to such executive agencies and to the purposes with which the heads of such agencies are in sympathy. In other words, the stations were prevented from proving that the Government itself at taxpayer's expense is constantly engaged in attempts to slant the news, attempts which require constant vigilance on the part of the operators of radio stations to prevent a biased and one-sided presentation of news. Reference is made to a recent report of the Committee on Freedom of Information of the American Society of Newspaper Editors in which the Committee concludes that government officials are guilty of "arrogant suppression of news", and of refusing to divulge information

about government "in any unprocessed form". (*The New York Times*, April 22, 1951, Pt. 1, p. 24, col. 1). Without knowledge as to the condition and content of the news at its point of origin, it is impossible for the Examiner or the Commission to make a worthwhile determination as to whether the news as finally reported over the radio is biased or one-sided.

The Examiner also ruled that the stations could not show the manner in which other radio stations or newspapers treated the same news subjects which were complained of by former employees of the Richards stations. The stations were thereby prevented from establishing that the news as handled by the Richards stations was more fair, impartial and adequate than the news as handled by the other radio stations in the same communities which are not under investigation and which are not being subjected to the threat that their licenses will not be renewed. Also the Richards stations were prevented from proving by witnesses holding the highest civic and political positions that the reputation of the stations for fairness, impartiality and adequacy in the presentation of news was better than the reputation in similar respects of other stations in their communities.

The Richards stations were prevented from establishing through many advertising agencies and others who arranged to sponsor scores of news programs over the Richards stations on behalf of their customers and clients that the sponsorship of similar news programs presented on other radio stations in the same communities had resulted in many complaints from the listening public as to fairness and adequacy.

The Commission made no attempt to ascertain the true facts with respect to the various subjects of news which former employees of KMPC contended had been slanted. The Examiner ruled that it was physically impossible for him to go into such numerous and difficult subjects, each of which (for example, the merits of a telephone or coal strike) would involve a long and difficult trial in and of itself,



resulting in the end of nothing more than an informed opinion by the Examiner with respect to a controversial matter concerning which large segments of the American people hold different views. Thus there was not even an effort to find the true facts with respect to the news subjects, and there can not be a finding that any news subject was presented in an inaccurate or one-sided manner.

As previously noted the Examiner ruled that the newscasts would not be considered in their entirety, but hundreds of individual newscasts were received in evidence by the Examiner as samples to show the treatment of the news by the Richards stations with respect to various of the subjects complained of by former employees. These established that many of the persons and causes which the former employees of KMPC asserted were disliked and opposed by Mr. Richards, the owner of the stations, received lengthy and repeated favorable mention and treatment over the radio, and conversely that many of the persons and causes said to be favored by Mr. Richards were the subjects of numerous and repeated newscasts of an unfavorable nature.

The extent of the detailed evidence that was received was so great that limitation of space precludes the possibility of summarizing the material in this brief, even as to general subject matters. Accordingly for such a summary and particularly for an analysis of the numerous contradictions and misstatements of the former employees with respect to the matters sought to be complained of by them, reference is made to the detailed Proposed Findings of Fact submitted on behalf of the Richards stations.

In general, the stations were precluded from showing the true facts with respect to the actual subject matters dealt with in the news, were prevented from presenting expert opinions of the fairness and adequacy of their treatment of the news as a whole and were prevented from establishing that their handling of the news made for superiority as to fairness, impartiality, adequacy and accuracy to that of other radio stations and other media of news dissemination.

The stations were permitted to and did show that the stations had excellent reputations in their communities for fair, impartial, accurate and adequate news presentation, and that agencies and their clients sponsoring newscasts on the stations received no complaints from listeners, or from anyone else. The stations were permitted to and did show, further, that favorable news items were broadcast about each and every subject of news complained of by former employees and the Commission's General Counsel, and were permitted to and did show, through cross-examination of such former employees, that nothing false or untrue was broadcast by the Richards stations; that such employees differed among themselves as to their treatment of the same items of the news; that such employees asserted only general, hazy and non-specific recollections of what they claimed to have been told by Mr. Richards concerning the treatment of news and that even these hazy and non-specific recollections were contradictory with each other. The Examiner also stated—

“That all of the presumptions that could possibly be raised would be favorable to the stations on all matters except those specifically raised in the issues” (Tr. 17088-17089).

Evidence was received to establish the existence of a private radio monitoring service (Radio Reports, Inc.) and the instructions to and practice of the personnel of the monitoring service to listen to and record a large number of the newscasts of Station KMPC, as well as those of most other radio stations, with the particular purpose of noting and reporting to persons or groups criticized, any references made to them in radio newscasts of KMPC. Although improperly suppressed and withheld by the General Counsel of the Commission, large numbers of such recordings, and notes outlining still others were produced by the General Counsel upon demand of the Richards stations. The Richards stations were not permitted, however, to introduce in evidence the contractual arrangements with various organizations, particularly the Jewish Anti-Defamation League of B'nai B'rith and other

Jewish organizations, to show first that they were clients of the monitoring service and second that although hired for the purpose of reporting anything unfavorable to them broadcast by any Los Angeles radio station, including KMPC, the monitoring service found nothing unfavorable to Jewish persons or causes to report from KMPC.

**4. The attempt to inquire into the personal beliefs of Mr. Richards was a violation of his Constitutional rights.**

On the question of alleged personal bias and prejudice of Mr. Richards, particularly with respect to Mr. Richards' alleged personal bias against Democrats and Jews, the Examiner ruled that the Commission had no right to inquire into the private and personal beliefs and convictions of anyone, but nevertheless received in evidence a mass of documents and oral testimony relating to Mr. Richards' private and personal beliefs and convictions, subject to connection, and subject to a determination by the Examiner, that they included or evidenced an instruction or directive to treat news over the radio in an improper fashion and that the news, to some extent, as a result thereof, was improperly presented by the stations.

Scores of witnesses, among whom were many leading Democratic office holders, including United States Senators and Governors of states, and leading Jewish citizens, testified as to the excellent reputation of the stations and of Mr. Richards for fairness and impartiality in the treatment of Democrats and Jews. Scores of witnesses testified that during all the many years of operation of the stations under the management of Mr. Richards, not only the public generally but millions of Democrats and Jews and others opposed to unfair treatment of Democrats and Jews, had no complaints of any kind about the stations' news broadcasts. This, plus the inability of Commission counsel to produce from the tens of thousands of separate newscasts, comprising many millions of words concerning every human endeavor

discussed in the news during the last ten years, any false statements or any statements unfair or improper with respect to Democrats or Jews or any other matters complained of, establishes both the impropriety of invading the privacy of Mr. Richards and the impossibility of making any worthwhile determination either as to the extent or effect of any of his personal views. In other words, if the personal views of the owner had so little effect on the broadcasts that they were not noted by any of millions of listeners over a period of years, including millions of persons who held opposing personal views and including the most capable and gifted of our civic leaders of all political, religious and racial groups, no governmental agency can expect to make a worthwhile or accurate judgment with respect to the matter. And no adequate standards or safeguards can be set up to prevent a governmental agency from using such nebulous material to protect the government in power from the criticisms which the public and any radio or newspaper serving the public have a right to make. The claim of the Commission General Counsel that the Commission has a right and duty to make such determinations in such a field where it has no expert knowledge amounts to an assertion that the American people are too stupid to be allowed to judge what they shall listen to or to which of many competing news media they shall give credence. If permitted, it can have only one end result, government censorship in violation of both the Constitution and the Federal statutes.

- 5. Commission counsel's wilful suppression of evidence and attempt to present a biased and one-sided case was a violation of the Commission's Rules, of the Federal Communications Act, and of the Administrative Procedure Act and deprived the stations of their rights and privileges under these Rules and Acts and under the U. S. Constitution.**

The Commission denied the Richards stations' motion for a bill of particulars. At a prehearing conference before

the first hearing, the General Counsel for the Commission asserted that this action of the Commission constituted a ruling that it would be improper for him to furnish counsel for the stations with the substance of what he expected to prove by his witnesses. At the first hearing Commission counsel presented all the evidence against KMPC which he intended to present and then rested. When the unfortunate death of Examiner J. Fred Johnson required a new hearing, the stations prepared to present evidence in support of their applications, and had witnesses from out-of-town ready to testify. Even though the Examiner ruled the applicants had the right to proceed first, the General Counsel insisted upon proceeding first and obtained by false statements in his brief a reversal of the Examiner's ruling in violation of the Commission's own rules. Because he had utterly failed to prove his charges at the first hearing, he used his unfair advantage not to present again the evidence he had presented at the first hearing, but to conduct a fishing expedition in the hope of uncovering some technical violation upon which to base a refusal to renew the licenses of the stations.

This took the procedural form, in part, of a ranging, vicious and interminable cross-examination, under the guise of direct examination, of KMPC's general manager, and of repeated and burdensome demands for the production of station documents and records never mentioned or referred to before, many of which were never used when it developed that they disproved Commission counsel's allegations.

At all times and in all ways, the General Counsel for the Commission acted as the antagonist of the stations, refusing by preconference procedure or otherwise to apprise counsel for the stations as to the charges which they would have to meet or to assume responsibility on behalf of the Commission for making or proving any charges. Also, there was no effort by the General Counsel of the Commission to present unbiased, unprejudiced and complete evidence with respect to the matters dealt with by him. On the contrary,

he publicly asserted that he had no obligation to the stations and objected to the evidence of scores of prominent citizens and public and private officials with respect to the reputation of the stations and the excellence of their services to their communities. He subjected the highest public officials and the most outstanding civic leaders to bitter and extended cross-examination filled with insults and inferences that they were prejudiced in favor of the stations and even were lying to protect the stations.

He went so far as to claim that these officials and leaders manufactured their reputation testimony to reflect favorable publicity received by the stations in newspapers and magazine editorials, as well as in the Congressional Record. He objected strenuously to the stations' evidence that irresponsible and untrue charges of three disgruntled ex-employees, motivated by vengeance, had been magnified out of all proportion by one-sided, biased, unfair and sensational news accounts of such charges in the trade press and left-wing publications. He objected also to the stations' efforts to establish that affidavits obtained in confidence by Commission investigators from ex-KMPC employees were made available for a nationwide radio broadcast on which they were used for a one-sided, biased attempt to smear Mr. Richards.

He even objected to the introduction of the newscasts themselves to show what was actually broadcast over the stations. He refused to produce papers and records within his custody and acted as counsel for and in support of refusals of witnesses to furnish information or papers sought by counsel for the stations for cross-examination and with respect to matters concerning which they had testified. He withheld and suppressed documentary evidence in his possession which was contrary to various of the assertions made by him and to oral testimony he adduced from his witnesses.

This attitude and conduct of the General Counsel, which was biased and prejudiced with respect to the stations, was called to the attention of the Commission by motion made

November 20, 1950. At that time a brief dealing with the conduct of the General Counsel was filed with the Commission. On February 23, 1951 the Commission ruled that it would not make any determination of any kind with respect to the action of its General Counsel at that time.

The General Counsel and his staff have directed their entire energies to attempting to prove the truth of the charges of former employees and to suppress and prevent the introduction in evidence of anything to the contrary or anything showing the record of service of the stations to their communities and their standing and reputation. Relying on such charges, the General Counsel and staff assert that the record for service and the reputation and standing of the stations are entirely irrelevant and contend that irrespective of the unexcelled reputation and standing of the stations, their record of splendid service to their communities for decades, and the recognition of the value of their services by the communities served by them, their licenses should be revoked by denying the application for renewal which they were forced to make at the end of the three-year licensing period.

**6. The Act does not and could not constitutionally give the Commission jurisdiction to inquire into the content of newscasts.**

The issues purport to call for a determination by the Examiner and by the Commission of the degree to which the news and other programs of the three stations reflected Mr. Richards' private views as to certain individuals and subjects in the news, for a determination of the propriety or fairness or objectivity of such news and other programs and to predicate, wholly or in part, on these determinations the decision to renew or not to renew the stations' licenses. Such determinations require the Examiner and the Commission to examine, analyze and place a value or pass judgment on the content of the news and other programs presented by the three stations.

The Act, except in certain specified instances, does not grant the Commission jurisdiction to determine the value to the public, or the effect on the public, of news or other programs presented by a radio station. The Commission is given power with respect to the actual content of programs only in a certain few specified instances of violations of statutes such as programs containing indecent language, false distress signals or plagiarizing programs on other stations (47 U. S. C. A. Sec. 325; 18 U. S. C. A. Sec. 1464).

The Act in a number of sections speaks about the Commission's power to grant, renew or revoke licenses, if the "public interest, convenience or necessity" so requires. There is nothing in this language, or in language elsewhere in the Act, or in the legislative history of the Act, which indicates that these words constitute an independent grant of power to the Commission enabling it, in granting, renewing or revoking licenses, to consider factors other than those set forth specifically for consideration in the Act.

In particular, the words "public interest, convenience or necessity" do not give the Commission power to consider as a factor in renewal applications the actual content of a licensee's news and other programs.

If these words are construed to mean that Congress intended to give the Commission power to consider any factors the Commission itself deems material in granting, renewing or revoking licenses, the Act is unconstitutional because of its failure to specify guides of sufficient definition for the Commission, and those subject to the Commission's jurisdiction, to follow.

Section 326 of the Act states that nothing in the Act shall give the Commission the power to censor radio communications or signals, or to interfere with free speech. Traditional concepts of free speech and censorship make it clear that Congress intended that the Commission should not have jurisdiction to inquire into the actual content of a licensee's news or other programs and to predicate on a judgment of the value



or propriety of such content a decision to renew, not to renew or to revoke the license. The Commission and its staff are not experts in such subjects or otherwise qualified to make such determinations, and counsel for the stations was prevented from proving such lack of qualifications by examining the Commissioners.

If the Federal Communications Act is construed to give the Commission or its agents jurisdiction to inquire into the content of news and other radio programs, to examine, analyze and place a value or pass judgment as to the content of these programs, and to predicate on that judgment, wholly or in part, the revocation or refusal to grant or renew a station's license, the Act would contravene the First Amendment of the Constitution.

Such a construction would mean that seven Commissioners, four from the party in power, would have the power to review the content of a station's news and other programs, judge their value to and effect on the listening public and to decide on that basis to grant, renew, or refuse to renew the license. The dangers of misuse and abuse are self-evident, and we could have in the United States a repetition of the unfortunate action of the Argentine government against *La Prensa*. A decision to muzzle a licensee whose broadcasts displease four Commissioners or their party can masquerade with ease as a decision to refuse to renew a license on the grounds that broadcasts lack "value" or "propriety".

The justification for or value of a program, in the last analysis, is its acceptance by listeners. Acceptance by listeners involves the number of people who listen to the program and their reaction to it. One person's personal opinion of the value and propriety of the program, or the personal opinion of four people or seven, is relatively unimportant and insignificant. Opinions are for the most part subjective phenomena. What might be considered a valueless program to one person might be an extremely valuable program to another, with all shades of opinion in between.

Neither the seven Commissioners, nor any four, nor any member of the Commission staff are qualified to make an expert appraisal of or pass judgment on news or other programs. The people who should and do have the power to make this decision are the station's listeners.

The inadvisability of having the Commission or a member of its staff judge the value and effect of a station's news and other programs is demonstrated by the difficulties encountered in attempting to reach a determination as to whether or not news programs are good programs or fair programs.

In the first place, there is no known standard, rule or norm against which the fairness of news presentation can be judged. A finding of propriety or a finding of fairness requires some sort of standard rule or norm against which deviations can be measured.

The absence of any such rule or norm is due to the nature of news itself. News is essentially non-objective. It is a chain of subjective reactions, or, stated in another way, a chain of opinions. Two reporters reporting the same event will report it entirely differently even though both may be doing their best to make an objective news report. This is because education, environment, heredity, etc., lead different people to see the same thing differently, to conclude differently as to its more or less important aspects and its relative significance to other things, and this phenomenon is repeated at each of the many stages between observation of an event and the broadcasting of a report about it.

#### **7. The issues as framed were both too broad and too narrow**

The issues permitted an inquiry which was too broad in certain respects and too narrow in others. The inquiry permitted into Mr. Richards' character, private views, and conversations with employees, under the guise of inquiring into his "other qualifications", was far too broad. Commission

counsel could have inquired into all of Mr. Richards' thoughts and actions since the date of his birth. Commission counsel did go back as far as 1937. There was no specification whatsoever in the issues as to the matters into which Commission counsel might inquire, and no standards whatsoever were prescribed as a guide for determining what types of thoughts and actions might disqualify a person from being the principal stockholder of a broadcast licensee.

On the other hand, the issues were too narrow in that they did not permit a full inquiry into the services rendered by the stations, or a comparison of the services rendered by the stations with the services rendered by other stations in their respective communities.

The only satisfactory way to determine whether the "public interest, convenience and necessity" would be served by a grant of these renewal applications, which the Commission's General Counsel asserts is the sole purpose of the inquiry, is to compare the services rendered by these stations with the services rendered by other stations, particularly other stations in their respective communities.

The only justification asserted for the Commission's licensing power is the limited number of wave lengths available and the consequent need to allocate them to those who will best serve the public interest, convenience and necessity.

Mr. Richards has been a principal stockholder of these licensees for from thirteen to twenty-four years. The proper method of determining whether their applications for renewal of licenses should be granted is to compare the judgment of the public respecting their services with its judgment respecting the services of other stations serving the same communities. Stations found superior by the public should not be ruled off the air because four Commissioners do not like one or more fragments of their programming.

To the extent that the Examiner permitted the stations to introduce evidence with respect to the services of these stations, and their reputations, such evidence shows that these stations are outstanding in their communities. The Examiner

ruled that all presumptions not encompassing matters in the issues were in favor of the stations. The hearings proceeded despite the presumption that each of these three licensees had been operated excellently over the years in a manner serving the public interest, convenience and necessity. No question was raised with respect to the qualification of the corporate licensees themselves. No question was raised as to the qualifications, experience and judgment of the officers and directors of the licensees other than Mr. Richards. No question was raised respecting Mr. Richards' financial, legal and technical qualifications.

Since the only justification even claimed for inquiring into the qualifications of a principal stockholder is to endeavor to determine whether a license, if granted or renewed, would result in better services to the public than if some other application were granted, it follows that the record of excellent performance of these three stations over the years under Mr. Richards' ownership, coupled with the presumption that their services have been superior to the services of other stations in their communities, require that the licenses be renewed regardless of any opinion which the Examiner or the Commission might entertain respecting Mr. Richards' "other qualifications", whatever those terms may mean. The fact that the stations have achieved such outstanding public recognition and acceptance under Mr. Richards makes it clear that the Commission has no authority to inquire into any other characteristics or qualifications of Mr. Richards. The character and qualifications to be considered are those of the corporate licensee as a broadcaster, not those of a single stockholder as a private citizen. Such character and qualifications of the corporate licensees are the sum total of the experience, judgment, actions and service of all of the officers and directors, and the collective decisions reached, which are the primary consideration of the Commission, and not occasional utterances of any one of them. The only qualifications which the Commission is permitted to inquire into are those which are involved in the proper operation of radio stations and

those qualifications have already been determined by years of public acceptance to require the renewal of the licenses.

WHEREFORE, it is respectfully submitted that the applications of KMPC, WJR and WGAR, for renewal of their licenses, should be renewed.

FULTON, WALTER & HALLEY  
1411 Pennsylvania Avenue, N.W.  
Washington 4, D. C.

By *Hugh Fulton*  
Hugh Fulton  
their attorneys

Of counsel:

HUGH FULTON  
JOSEPH W. BURNS

Dated: April 25, 1951

**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK, }  
COUNTY OF NEW YORK, } ss.:

GEORGE ROWE, JR., being first duly sworn, deposes and says that on this date and at his direction a true and accurate copy of the foregoing Memorandum of WJR, KMPC and WGAR, in support of Proposed Findings of Fact and Conclusions, was served upon Benedict P. Cottone, Esq., General Counsel, Federal Communications Commission, by depositing a copy of the same in the United States Mails, postage prepaid, addressed to:

Benedict P. Cottone, Esq.  
General Counsel  
Federal Communications Commission  
Washington 25, D. C.

*George Rowe, Jr.*

Subscribed and sworn to before me this 25th day of April, 1951.

*Daniel J. O'Connell*

DANIEL J. O'CONNELL  
Notary Public in the State of N. Y.  
Qualified in Nassau County  
No. 30,2931850  
Certificates filed with  
New York Co. Clk's & Reg. Office  
Commission expires March 30, 1953

(SEAL)



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